

48A C.J.S. Judges § 204

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

VII. Compensation and Fees

B. Amount

2. Change in Amount During Term of Office

b. Restrictions Against Altering Compensation During Term

§ 204. What constitutes change—Taxation

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West's Key Number Digest

West's Key Number Digest, [Judges](#)  22(7)

The Compensation Clause of the Federal Constitution does not prevent Congress from imposing a nondiscriminatory tax laid generally upon judges and other citizens but does prohibit taxation that singles out judges for specially unfavorable treatment.

The Compensation Clause of the Federal Constitution, providing that judges' salaries shall not be diminished during their continuance in office,¹ does not forbid Congress to enact a law imposing a nondiscriminatory tax (including an increase in rates or a change in conditions) upon judges, whether those judges were appointed before or after the tax law in question was enacted or took effect.² In practice, the likelihood that a nondiscriminatory tax represents a disguised legislative effort to influence the judicial will is virtually nonexistent.³ The potential threats to judicial independence that underlie the Constitution's compensation guarantee cannot justify a special

judicial exemption from a commonly shared tax, not even as a preventive measure to counter those threats.⁴ However, the Compensation Clause does prohibit taxation that singles out judges for specially unfavorable treatment.⁵

The salaries of state judges are subject to federal income tax, and such taxation does not unconstitutionally diminish their salaries.⁶

It has been held that the salary of an incumbent judge is not subject to a state income tax, since imposition of such tax would in effect diminish the compensation of the judge during the period of his or her service,⁷ but such taxes have been upheld in other jurisdictions under similar constitutional provisions.⁸

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Footnotes

- 1 U.S. Const. Art. III, § 1.
- 2 U.S.—U.S. v. Hatter, 532 U.S. 557, 121 S. Ct. 1782, 149 L. Ed. 2d 820 (2001).
- 3 U.S.—U.S. v. Hatter, 532 U.S. 557, 121 S. Ct. 1782, 149 L. Ed. 2d 820 (2001).
- 4 U.S.—U.S. v. Hatter, 532 U.S. 557, 121 S. Ct. 1782, 149 L. Ed. 2d 820 (2001).
- 5 **Social Security tax**
A law applying the Social Security tax to sitting federal judges discriminated against the judges in a manner forbidden by the Compensation Clause by effectively singling out federal judges for unfavorable treatment in comparison to other federal employees brought into the system by the same law as the law permitted nearly all existing federal employees, with the exception of federal judges, to avoid the newly imposed obligation to pay Social Security taxes; the law imposed a substantial cost on judges with little or no expectation of a substantial benefit for most of them, who had already qualified for Social Security by virtue of prior work in the private sector; and the law did not equalize the burdens imposed by the noncontributory judicial retirement system and the contributory systems for other high-ranking federal employees but imposed a new financial obligation upon sitting judges, who had not previously been required to contribute to the pension.

U.S.—U.S. v. Hatter, 532 U.S. 557, 121 S. Ct. 1782, 149 L. Ed. 2d 820 (2001).
- 6 U.S.—Gunn v. Dallman, 171 F.2d 36 (7th Cir. 1948).
- 7 Md.—Gordy v. Dennis, 176 Md. 106, 5 A.2d 69 (1939).
- 8 Mo.—Taylor v. Gehner, 329 Mo. 511, 45 S.W.2d 59, 82 A.L.R. 986 (1931).

N.Y.—Black v. Graves, 257 A.D. 176, 12 N.Y.S.2d 785 (3d Dep't 1939), judgment aff'd, 281 N.Y. 792, 24 N.E.2d 478 (1939).